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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/143092

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 14, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on September 17, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly terminated Petitioner's FoodShare benefits effective September 1, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On September 26, 2011, pursuant to a divorce action, the circuit court entered a temporary order granting primary placement of Petitioner's three children to their mother, [REDACTED]. The court further ordered Petitioner and [REDACTED] to enter into mediation. (Exhibit 5, pg. 4)

3. On November 11, 2011, Petitioner and [REDACTED] entered into a parenting agreement, as the result of the court ordered mediation. The parenting agreement establishes joint custody, but gives primary placement of the children to Petitioner. (Exhibit 3, pgs. 14- 19; Petitioner's testimony)
4. Petitioner's children attend school in Illinois, in the district where [REDACTED] lives. However, the children reside with Petitioner four of seven days of the week. Holidays such as Easter and Christmas are to be split equitably, but the children are with Petitioner every Memorial Day and every Labor Day. (Exhibit 3, pg. 16; Petitioner's testimony)
5. Petitioner pays more than 50% for daycare for the children; he is the primary contact with the children's school and he is responsible for taking the children to their doctor's appointments. (Testimony of Petitioner)
6. On August 13, 2012, the agency sent Petitioner a notice of negative action, stating that his FoodShare benefits would be ending. (Exhibit 3, pg. 10)
7. On August 15, 2012, petitioner filed a request for a fair hearing.

### DISCUSSION

The agency is required to verify certain factors relating to Food Share. 7 C.F.R. § 273.2(f)(1); See also, 7 C.F.R. §§ 273.2(f)(2)(i) & (f)(8)(i)(A); *Food Share Wisconsin Handbook*, § 1.2.6. "Household composition" is a mandatory item of non -financial verification. *FoodShare Wisconsin Handbook*, § 1.2.3.7. In addition, "questionable items" must be verified as well, including household composition. *FoodShare Wisconsin Handbook*, § 1.2.5.

"Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit."

*FoodShare Wisconsin Handbook* § 3.2.1.1

"If the parents cannot or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?
11. Who spends money on food or clothing for the child when the child visits the absent parent?
12. Who disciplines the child?
13. Who plays with the child and arranges for entertainment?
14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FoodShare for a child. ” *Id.*

The agency terminated Petitioner’s FoodShare benefits, because they removed his three children from his assistance group, which resulted in the Petitioner becoming financially ineligible for FoodShare. The agency contends that because the children are enrolled in school in Illinois, that they must be residing in Illinois with their mother. However, the location of a child’s school is not determinative of the child’s residence. The FoodShare Manual cited above, bases residency of a child upon a determination of which parent is the primary caretaker of the child, a fact that can either be established primarily through legal documentation or if that cannot be done, secondarily through circumstances, which can include the district in which the child attends school.

In the case at hand, the parenting agreement plainly states on its face that Petitioner is to have the children four of seven days per week, with additional time on Memorial Day and Labor Day. This means that the children reside with Petitioner in Kenosha more than 50% of the time. Petitioner testified credibly that his ex-wife and he have been following the visitation schedule established by the parenting agreement and that he is primarily responsible for communicating with the children’s school, helping the children with their homework, taking them to doctor’s appointments and paying for daycare. Based upon the foregoing, it is found that the Petitioner is the primary caretaker of his three children and correctly included his children in his FoodShare assistance group.

### **CONCLUSIONS OF LAW**

The county agency incorrectly removed Petitioner’s children from his assistance group and incorrectly terminated the Petitioner’s FoodShare benefits, effective September 1, 2012.

**THEREFORE, it is**

### **ORDERED**

That the agency reinstate Petitioner’s FoodShare benefits, effective September 1, 2012, if he is otherwise eligible. The agency shall take steps to do this within 10 days.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

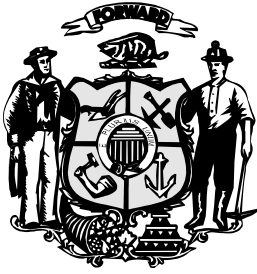
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of September, 2012

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Kenosha County Human Service Department - email  
Department of Health Services – email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 25, 2012.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability